

STATE BAR OF CALIFORNIA
COMMISSION FOR THE REVISION OF THE RULES
OF PROFESSIONAL CONDUCT

OPEN SESSION AGENDA

Friday, December 10, 2004
(9:15 am - 12:30 and 1:00 - 5:00 pm)

VIDEO-CONFERENCE MEETING

SF–State Bar Office
180 Howard Street, Room 8-B
San Francisco, CA 94105

LA–State Bar Office
1149 So. Hill Street, Room 723
Los Angeles, CA 90015

[NOTE RE MEETING SITE: For members of the public, this meeting can be accessed by video-conference from both the State Bar Office in San Francisco at 180 Howard Street, Room 8B and the State Bar Office in Los Angeles, 1149 So. Hill St., Rm. 923. Members of the public who wish to attend this meeting are asked to call Audrey Hollins at 415-538-2167.]

I. APPROVAL OF OPEN SESSION ACTION SUMMARY FROM THE AUGUST 27 & 28, 2004 & OCTOBER 8, 2004 MEETINGS

(Draft action summary for the August 27 & 28, 2004 and October 8, 2004 meetings to be circulated prior to the December meeting.)

II. REMARKS OF CHAIR

A. Chair's Report

(The Chair will provide an oral report on administrative, procedural, or other informational matters.)

B. Staff's Report

(Materials enclosed. Staff will report on the activities of COPRAC and the Board of Governors.) ***[pages 1 – 10]***

III. **MATTERS FOR ACTION** (Name with asterisk is lead drafter, underline indicates a newly added co-drafter.)

*Lamport
Julien
Melchior
Ruvolo
Tuft

- A. **Consideration of Rule 1-100. Rules of Professional Conduct, in General**
[anticipated 1-1/2hour discussion]
(Materials enclosed.) ***[pages 11 – 20]***

*Martinez
Sapiro
Voogd

- B. **Consideration of Rule 2-100. Communication With a Represented Party**
[anticipated 1-hour discussion]
(Materials enclosed.) ***[pages 21 – 44]***

*Tuft
Martinez
Peck

- C. **Law Firm Definition** (previously considered as part of proposed new rule 1-310X and proposed amended rule 2-200)
[anticipated 1-hour discussion]
(Matter carried over from October 8, 2004 meeting. October meeting materials enclosed. As previously indicated, only issues raised in comments from Jerry Sapiro dated October 6, 2004 and from Kurt Melchior dated October 3, 2004 (sent by Enica Allen on October 4, 2004), and any issues raised by the codrafters in the October agenda materials, will be considered.) ***[pages 45 – 54]***

*Melchior
Martinez
Sapiro

- D. **Consideration of Rule 2-300. Sale or Purchase of a Law Practice of a Member, Living or Deceased**
[anticipated 1/2-hour discussion]
(Matter carried over from October 8, 2004 meeting. October meeting materials enclosed. As previously indicated, only issues identified in the Chair's e-mail dated October 4, 2003 together with any issues raised by the codrafters will be considered.) ***[pages 55 – 110]***

*Voogd
George
Tuft

- E. Consideration of Rule 3-200. Prohibited Objectives of Employment**
[anticipated 1-hour discussion]
(Carried over from October 8, 2004 meeting. October meeting materials enclosed. As previously indicated, only the issues raised in Kevin Mohr's October 5, 2004 e-mail compilation and any issues raised by the co-drafters in the October agenda materials, will be considered.)
[pages 111 – 126]

*Peck
George
Martinez

- F. Consideration of Rule 2-400. Prohibited Discriminatory Conduct in a Law Practice**
[anticipated 1-hour discussion]
(Materials enclosed.) **[pages 127 – 144]**

*Vapnek
Peck
Ruvolo

- G. Consideration of Rule 3-110. Failing to Act Competently**
(The chair has postponed consideration of this agenda item until the **December 10th meeting**. Codrafters are assigned to submit materials to staff by 12:00 noon on **Monday, November 15** for distribution with the December agenda materials.)

All Members

*Ruvolo
Tuft
Vapnek
Mohr

- H. Counterpart to Rule 1-310X re Lawyers Influencing Lawyers**
((The chair has postponed consideration of this agenda item until the **December 10th meeting**. Commission members are assigned to review the draft prepared by Nace Ruvolo, dated 9/20/04 (recently distributed to you with the October 22, 2004 assignment mailing), and send any comments to the codrafters by 12:00 noon on **Monday, November 8**. *Only comments or objections received by 12:00 noon on November 8 will be considered at the December meeting.*)

*Melchior
Julien
Tuft

- I. Consideration of Proposed New Rule or Amended Rule Prohibiting a Request or Agreement to Waive the Attorney-Client Privilege**
(The chair has postponed consideration of this agenda item until the **December 10th meeting**. Codrafters are assigned to submit materials to staff by 12:00 noon on **Monday, November 15** for distribution with the December agenda materials.)

*Tuft
Martinez
Peck

- J. Consideration of Rule 5.4. Professional Independence of a Lawyer (aka Rule 1-310X)**
[anticipated 1-hour discussion]
(Materials enclosed.) **[pages 145 – 160]**

In addition to Items G., H. & I. above, the following items will also be considered at the December 10th meeting:

All Members

*Ruvolo
Foy
Julien

- K. Consideration of Rule 3-120. Sexual Relations With Client**
(Codrafters are assigned to consider and respond to the comment received from COPRAC (comment no. 2004-48), recently distributed to you with the October 22, 2004 assignment mailing, and prepare a redraft, if any, for submission to staff by 12:00 noon on **Monday, November 15** for distribution with the December agenda materials. Commission members are assigned to review the recommendation prepared by Nace Ruvolo (dated 9/20/04) as well as the comments by OCTC (comment no. 2001-01a), and COPRAC (comment no.2004-48), and send any comments to the codrafters by 12:00 noon on **Monday, November 8**. In addition to the aforementioned comments, only additional comments or objections received by 12:00 noon on November 8 date will be considered at the December meeting.)

*Tuft
Foy
George

- L. Consideration of Rule 3-210. Advising the Violation of Law**
(Co-drafters are assigned to prepare and submit a first draft of a proposed new rule or rule amendment to staff by 12:00 noon on **Monday, November 15** for distribution with the December agenda materials.)

*Lamport
Tuft
Voogd

- M. Consideration of Rule 3-300. Avoiding Interests Adverse to a Client**
(Matter carried over from October 8, 2004 meeting. Please refer to materials previously distributed with the open session October 8, 2004 meeting agenda (pages 169 - 174), as well as the 10 page compilation of e-mails prepared by Kevin Mohr for this rule on October 5, 2004. Only the concerns expressed in that compilation, together with any issues raised by the co-drafters in the October agenda materials, will be considered.

STATE BAR OF CALIFORNIA
COMMISSION FOR THE REVISION OF THE RULES
OF PROFESSIONAL CONDUCT

CLOSED SESSION AGENDA*

Friday, December 10, 2004
(9:00 a.m - 9:15 a.m.)

VIDEO-CONFERENCE MEETING

SF—State Bar Office
180 Howard Street, Room 8-B
San Francisco, CA 94105

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1149 So. Hill Street, Room 723
Los Angeles, CA 90015

- I. **APPROVAL OF CLOSED SESSION SUMMARY FROM THE AUGUST 27 & 28, 2004 AND OCTOBER 8, 2004 MEETINGS**
(Draft action summaries to be circulated prior to December meeting.)

- II. **ADVICE OF COUNSEL ON OPEN SESSION AGENDA ITEMS**

- III. **ACTION ITEMS.**
 - A. **Emergency action items, if any.**

* Closed pursuant to Article 3, Section 2, Subdivision (b), Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors.